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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/090,532	03/04/2002	Carolyn J. Brown	P04978US1	6642
22885	7590	12/27/2004	EXAMINER	
MCKEE, VOORHEES & SEASE, P.L.C. 801 GRAND AVENUE SUITE 3200 DES MOINES, IA 50309-2721			CHRISTMAN, KATHLEEN M	
			ART UNIT	PAPER NUMBER
			3713	

DATE MAILED: 12/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/090,532

**Applicant(s)**

BROWN ET AL.

**Examiner**

Kathleen M Christman

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10/07/2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-66 is/are pending in the application.
- 4a) Of the above claim(s) 26-53 and 58-63 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25, 54-57 and 63-66 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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### DETAILED ACTION

In response to the amendment filed 10/07/2004; claims 1-66 are pending; claims 26-53 and 58-63 remain withdrawn from consideration; claims 1-25, 54-57 and 64-66 remain under consideration.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-7, 14, 18-20, 54, 55, 64 and 66 rejected under 35 U.S.C. 102(b) as being anticipated by Cook et al (US 5727950). Cook et al teaches a method and system for instruction including: pre-designing a learning task and/or skill level for a student (col. 31: 52-58); pre-designing a set of support related to the learning task or skill level (col. 32: 39-44); presenting the learning task or skill level to a student (col. 24: 14-19); presenting to the student support from the pre-designed set of support (col. 13: 50-61); and adjusting the support presented to the student based on responses to the learning task or skill level from the student (col. 28: 40-59), as in independent **claim 1** and similar limitations **claims 54, 64, and 66**. The instruction being performed through an electronic device (**claim 2**), specifically a computer (**claim 5**), which includes a visual display (**claim 3**) and a speaker (**claim 4**), is taught in col. 16: 31-50. The system components of **claim 54** are taught throughout the section 5.1.2, starting at col. 15: 27, of the Cook et al reference. The student being an elementary school student (**claim 6**), which inherently includes kindergarten through second grade students (**claim 7**), is taught in col. 9: 1-4. The task or learning level being part of a curriculum (**claims 14 and 55**) is taught in col. 11: 55-67. The curriculum having one or more activities (**claim 18**) wherein the activities comprises one or more student tasks (**claim 19**), including answering questions (**claim 20**) are shown in at least Figures 3 and 4.

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Regarding **claim 64**, the aspects of basing a second learning activity off the responses to a first learning activity are described in the "remediation" abilities of Cook et al, see col. 28: 14-62.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

2. Claims 8-13, 15-17, 21-25, 56, 57, and 65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cook et al (US 5727950) in view of Wasowicz (US 6435877 B2). Cook et al teaches all aspects of the claimed invention as shown above but fails to specifically teach that the learning task or skill level is related to various parts of language acquisition, as in **claims 8-13, 15-17, 56, 57 and 65**; that the task is a matching task (**claim 21**), a recognition task (**claim 22**), or a sequential task (**claim 23**); that the learning task have varying difficulty levels (**claim 24**).

Wasowicz teaches a language education system which is performed on a computer. The system includes learning activities directed to both written and spoken language including auditory processing, phonological awareness, phonological processing and reading skills, see col. 2: 55-60. Multiple levels of difficulty are shown in col. 2: 63-67. The various types of exercises are shown in figures 4-6.

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Cook et al does not teach that his invention is limited to any one specific type of learning material. As such one of ordinary skill in the art of education would be forced to seek alternative sources for educational content such as the Wasowicz system. Given this it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the language lessons of the Wasowicz invention into the agent based education system of Cook so as to provide the student with a language education curriculum.

### ***Response to Arguments***

3. The rejection of claim 18 under 35 USC §112, second paragraph has been withdrawn in view of the amendments made thereto.

4. Applicant's arguments filed 10/07/2004 have been fully considered but they are not persuasive.

5. Applicant argues that the Cook et al system and the Wasowicz system do not teach "using the type and amount of support as the performance measure" (page 15, first full paragraph of the response). Applicant supports this assertion by citing several section of the Cook et al patent which show judging performance based upon right and wrong answers, error rates, and time to respond. However, applicant's independent claims do not reflect applicant's assertion that the system and method are drawn to "using the type and amount of support as the performance measure". Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

For example, claim 1 recites:

A method of instruction comprising:

- (a) pre-designing a learning task and/or skill level for a student
- (b) pre-desiring a set of support related to the learning task or skill level;
- (c) presenting the learning task or skill level to a student;
- (d) presenting to the student support from the pre-designed set of support;
- (e) adjusting the support presented to the student based on responses to the learning task or skill level from the student.

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This method results in the modification of the support level based upon the student responses to the learning task or skill level. There is nothing in the claim to suggest that the student performance is monitored using the amount of support. These features have been clearly shown by the citations in the Cook et al reference. The other independent claims also fail to include this feature. The examiner notes that Wasowicz has only been relied upon for its teaching of language education and not on its processes of presenting support to the student or user.

### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathleen M Christman whose telephone number is (571) 272-4435. The examiner can normally be reached on M-F 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on (571) 272-7147. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kathleen Christman  
December 15, 2004



**XUAN M. THAI**  
**PRIMARY EXAMINER**

*AM3713*